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Supreme Court, U.S.
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NO: _____

IN THE
Supreme Court of the United States

ROBERT THOMAS,
Petitioner,

V.

TRICO PRODUCT CORPORATION, *ET AL.*,
Respondents.

Petition for a Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

(a)

Whether a person can be coerced by a Judge by ordering to incarcerate him until he signs consent on the application for a passport of his minor child, and with reference to the above situation, whether the Court of Appeals erred in not finding that Thomas was innocent.

(b)

In affirming the summary judgment granted by the trial court, whether the court of appeals departed from the accepted standard of review set by this Court in *Reeves v. Sanderson Plumbing Products, Inc.*, 120 S.Ct. 2097, 68 USLW 4480, (U.S., Jun 12, 2000) and whether this affected Thomas 14th Amendment rights?

(c)

In this case the trial judge refused to compel Trico with regards to discovery on attendance records and the judge declared that it is not relevant. But when respondent filed the Motion for Summary Judgment, the same judge allowed the respondents to bring attendance records into evidence and the judge granted summary judgment based on that. With respect to this situation, did the trial judge abuse her discretionary power?

PARTIES TO THE PROCEEDING

Pursuant to Rule 14.1 (b), the following list identifies all the parties appearing here and before the United States Court of Appeals for the 5th Circuit.

The petitioner here and appellant below is Robert Thomas (Thomas), who is a pro se.

The appellees below and the respondents here are, Trico Product Corporation (Trico); Gates Corporation (Gates); Tomkins plc (Tomkins); Jim Gaither; and John Winn.

CORPORATE DISCLOSURE STATEMENT

Pursuant to Rule 29.6, petitioner state as follows:

Petitioner Robert Thomas, is a natural person, he has no parent companies or subsidiaries.

TABLE OF CONTENTS

QUESTIONS PRESENTED----------II

PARTIES TO THE PROCEEDING----------III

CORPORATE DISCLOSURE STATEMENT--------IV

TABLE OF AUTHORITIES----------VIII

OPINIONS BELOW----------1

JURISDICTION----------1

STATUTES INVOLVED----------1

STATEMENT OF THE CASE---------- 2

A. Factual Background---------- 3

B. Proceedings Below-District Court----------7

C. Proceedings Below-In the Court of Appeals-

----------19

REASONS FOR GRANTING THE PETITION------24

I THIS CASE RAISES THE CRITICALLY IMPORTANT QUESTION WHETHER A PERSON CAN BE INCARCERATED FOR NOT SIGNING CONSENT----------25

II. THE DECISION BELOW CREATES A

DIRECT CONFLICT WITH THE SUPREME COURT DECISION IN *REEVES*----------26

III. THE DECISION BELOW VIOLATED THOMAS' 14TH AMENDMENT RIGHTS----------30

IV. THE RULING ON ATTENDANCE RECORDS VIOLATED THOMAS' SUBSTANTIAL RIGHT TO DISCOVERY----------31

CONCLUSION----------32

APPENDIX----------1a-42a

1. Opinion entered by the U.S. Court of Appeals for the 5th Circuit, entered on October 26, 2007. ----------(1a-8a)
2. Order denying the petition for rehearing en banc, filed on November 26, 2007-------(9a-10a)
3. Order and Opinion entered by the U.S. District Court, for the Southern District of Texas, Brownsville, Division, on July 25, 2006 (Michael K. Milby, Clerk)----------(11a-21a)
4. Order (Judgment) entered by the U.S. District Court, for the Southern District of Texas, Brownsville, Division, on July 25, 2006 (Michael K. Milby, Clerk)---------- (22a)
5. Order (on motion to compel Trico) entered by the U.S. District Court, for the Southern

District of Texas, Brownsville, Division, on May 31, 2006 (Michael K. Milby, Clerk)---------- ---------- (23a-30a)
6. Order entered in Cause No. 2001-12-5216-E, In the interest of Gloria Thomas and Ashley Thomas, on April 3, 2003, by Abel Limas. (Filed on April 3, 2003, by Aurora De La Garza, District Clerk, Cameron County, Texas) ----------(31a-32a)
7. Article-Thanks Abel Limas ----------(33a-34a)
8. Article-Americas Most wanted yields few tips on Amit Livingston---------- (35a-36a)
9. Constitution Topic-Due Process------- (37a-40a)
10. Supplementary Information regarding signing consent ----------(41a-42a)

TABLE OF AUTHORITIES

CASES:

1. Burel v. Dr. Pepper, 482 F.3d at 414 (5th Cir. 2007)----------30

2. *Compaq Computer Corp. v. Ergonome Inc.*, 387 F.3d 403,408 (5th Cir.2004) ----------32

3. *EEOC v. Manville Sales Corp.*, 27 F.3d 1089,1095 (5th Cir. 1994)----------32

4. *Evans v. City of Bishop*, 238 F.3d 586,592 (5th Cir.2000).----------23

5. *Gee v. Principi, 289 F.3d 342, 347-48 (5th Cir.2002)*----------29

6. *Julian v. City of Houston, Tex.*, 314 F.3d 721, 728 (5th Cir.2002).----------28

7. *Matsushita Elec. Indus. Co.*, 475 U.S. at 587, 106 S.Ct. 1348)----------27

8. *Reeves v. Sanderson Plumbing Prods., Inc., 530 U.S. 133, 150, 120 S.Ct. 2097, 147 L.Ed.2d 105 (2000)*----------3, 26, 27, and 30

9. *Rhodes v. Guiberson Oil Tools*, 75 F.3d 959 (5th Cir. 1996).----------27

10. Riverwood Int'l Corp. v. Employers Ins. of Wausau,

420 F.3d 378, 382 (5th Cir.2005)----------28

PASSPORT RULES-PUBLIC LAW

Section 236 of the Admiral James W. Nance and Meg Donovan Foreign Relations Authorization Act, Public Law 106-113, 113 Stat. 1501A-420 (22 U.S.C. 213n) (``2-Parent Consent Statute'')----------26

U.S. CONSTITUTIONAL LAWS

14th Amendment and Due Process----------25, 30

OPINIONS BELOW

The opinion of the Court of Appeals was entered on October 26, 2007, and is reprinted in the appendix at 1a-8a (a stands for appendix) The opinion of the District Court was entered on July 25, 2006 and is reprinted at 11a-21a.

JURISDICTION

The Court of Appeal entered its judgment on October 26, 2007 and the petition for rehearing en banc was denied on the 26th of November, 2007 (9a-10a) This Court has jurisdiction under 28 U.S.C. § 1254 (1). The district court had jurisdiction over this civil case by virtue of Section 706(f)(3) of Title VII (42 U.S.C. § 2000e-5(f)(3), and 28 U.S.C §§ 1331 and 1343(a)(4).

STATUES INVOLVED

1. 42 U.S.C § 1981. Equal rights under the law:

(a) Statement of equal rights
All persons within the jurisdiction of the United States shall have the same right in every State and Territory to make and enforce contracts, to sue, be parties, give evidence, and to the full and equal benefit of all laws and proceedings for the security of persons and property as is enjoyed by white citizens, and shall be subject to like punishment, pains, penalties, taxes, licenses, and exactions of every kind, and to no other.
(b) "Make and enforce contracts" defined
For purposes of this section, the term "make and

enforce contracts" includes the making, performance, modification, and termination of contracts, and the enjoyment of all benefits, privileges, terms, and conditions of the contractual relationship.

2. Title VII of the Civil Rights act of 1964 ("Title VII), as amended, 42 U.S.C §§ 2000e-2000h-6.
42 U.S.C. SEC. 2000e-2.

(a) It shall be an unlawful employment practice for an employer -

(1) to fail or refuse to hire or to discharge any individual, or otherwise to discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual's race, color, religion, sex, or national origin; or

(2) to limit, segregate, or classify his employees or applicants for employment in any way which would deprive or tend to deprive any individual of employment opportunities or otherwise adversely affect his status as an employee, because of such individual's race, color, religion, sex, or national origin.

STATEMENT OF THE CASE

This is the first time ever in the history of the United States that a state District Judge ordered to incarcerate a father (the petitioner Thomas, who is an Asian by race and Indian by national Origin) for not signing consent on the application for a passport

of his minor child. (The Judge's order is attached as appendix 31a-32a). Even though Thomas was released after 4 months without signing, the respondents refused to hire him back and instead they hired several other employees (all from different race) who were less qualified than Thomas. Thomas' complaint was completely ignored by the EEOC, the District Court and the 5th Court of Appeals. Even though the respondents made false explanations for not hiring in all the levels, neither the District Court or the Appeal Court, consider those facts and denied Thomas any relief. The district court's and the appeal court's refusal to consider Thomas arguments and supporting evidences filed in this case is a radical departure from the law established in this Court, pursuant to, *Reeves v. Sanderson Plumbing Prods., Inc., 530 U.S. 133, 150, 120 S.Ct. 2097, 147 L.Ed.2d 105 (2000).* The District Court and the Appeal Court also did not make an opinion as to whether a judge can force a parent to sign consent.

The issues presented in this petition are of great concern, gravity, and importance to the public, and this petition should be granted because the opinion from the Court of appeals violates Thomas' 14th Amendment rights, produces manifestly unjust results, departs significantly from decades of legal precedent, and defies common sense. The review of the questions raised here is very important, which could affect the outcome of future discrimination cases.

A. Factual Background

Thomas when applied first time with Trico, on March 28, 2001, provided his resume (R 1662, R for Clerk's record) and application (R 1663-64) showing he has 23 years prior tool and die making experience

The records in this case showed that Thomas completed a 4years apprenticeship in tool and die in 1980 and he earned the diploma in Tool and Die making (R 1656) and obtained a Journeyman License in Tool and Die making (R 1660) At the time of hiring him, he was interviewed by the Tool room manager John Winn (who is a respondent and Tool room Manger, where Thomas worked). Mr. Winn has produced a satisfactory report, shows (R 1661) that he had verified Thomas' qualification and Thomas was qualified to be selected for the Tool Maker 'A' position. . On March 30, 2001 Thomas received the appointment letter, hiring him as Tool maker 'A', with a starting wage of $18.00 signed by both him and Jim Gaither (a respondent and personnel manager of Trico) and Thomas agreed to start work on April 14, 2001(R 1665-1666)

After Thomas started working with Trico, the employees and a supervisor in the Tool room (Juan Sauceda) started making fun of him by calling "Gandhi". At the time he was also going through a divorce for the second time with a woman he married before. His ex-wife's attorney with the help of the judge of the original court (the 357th district court of Cameron County) started creating problems for Thomas, by setting up the hearings late so that he would be late for work. This time the time clock at Trico was also turned 3 minutes ahead from the standard time, to make it more difficult for Thomas. So for these reasons Thomas was late several times in his early periods of work with respondents. Most of his tardiness was actually 1 minute late which was negligible. The respondents counted all one minutes and started giving him warnings. Even though he requested the time clock to be corrected they refused.

But once the divorce was finalized Thomas made perfect attendance.

Thomas in the mean time filed a notice appeal in his divorce case. Once his ex-wife's attorney found that Thomas was perfect in his attendance and he could not make Thomas loose his job any more, he used a new tactic. He tried to force Thomas to sign consent on the application for his younger daughter's passport, so his client could remove the children to India, and so the appeal will have no effect.

The 357th Judge denied this request. But the attorney somehow moved the case to the 404th Court, where Judge Abel Limas resided. Judge Limas is notorious for doing favors to persons he likes. Some of his most notorious rulings are attached as appendix 33a-36a. It shows that at 33a-34a a jury convicted a man for aggravated sexual assault of an El Salvadoran immigrant. But Judge Limas allowed him bond to remain free until sentencing and the man never appeared for sentencing. In the same page it shows that the Judge did favor for a drunk driver who made an accident. The next pages (35a-36a) show that he made another history by releasing a murderer on bond for 60 days before the commencement of his 23 years sentencing and the murderer disappeared.

From the relevant records from Thomas' divorce case (R 1586-1599), it shows that, on April 3 2003 (R 28-29, 31a-32a) Judge Limas ordered to incarcerate him until he signs consent on the application for his minor daughter. Because of this illegal action, he was forced to stay in jail to save his children being abducted to India (R 1546, R 1465-1469). The evidence showed that the mother earlier, in the year 1997, did abduct the children (R 1574)

and she was in jail for that until she surrendered the children to Thomas' family in India (R 1465-1466, 1574, 1836 and 1855-1858).)

While being incarcerated, Thomas asked for leave of absence with Jim Gaither, but he refused and advised Thomas to resign, in order to be eligible to be hired back (R 22, R1681-1682).

On July 31, 2003, Thomas was released from jail without signing the consent and he immediately met with respondent John Winn and requested him to hire him back (R 22-23). But he asked Thomas to put an application again, and he applied.

When Thomas applied second time with respondents on August 4, 2003 for the position of tool maker (1470-1471 and 1550), he did not file his resume and he did not mention all of his employers, since the respondents already had that information in his personnel file (Thomas just departed with Trico only for 4 months). In the application he mentioned only 3 of his previous employers (Trico, Adtech and Orchid) and he mentioned that he completed 4 years advanced training in Tool and Making and he is licensed as Journeyman Tool maker. The application showed that he has 11 years of Tool and Die making experience (2 years with Trico, 4 years with Adtech, 1 year with orchid and 4 years advanced training) and he has Journeyman License in Tool making. This qualification itself far exceeded the required qualification of an applicant as per the advertisement made by Trico for Tool makers, in the Brownsville Herald on the 20th of July 2003 (R 1607-1608). The advertisement showed that, the minimum qualifications for Tool maker was; Journeymen License in Tool making and 8 years experience in the Tool and Die making field.

But Thomas was never called for an interview and respondents hired Eich instead. Thomas worked with Eich at Adtech and he knew that Eich is not a licensed tool maker and he has only very few years experience in the Tool making field. Thomas believed that respondents hired him only because he is a Caucasian male born in the U.S. (R1779) and respondents hated Thomas due to his race being Asian and born in India. Thomas then filed a complaint with EEOC.

Respondents, Gates and Tomkins representing Trico, misrepresented to the EEOC that Thomas had only 7 years experience in Tool making and Eich had 8 years experience in Tool making. As per their statement made to the EEOC which was made under oath by Jim Gaither, showed that (at R 1682-84) the legitimate reason for hiring Eich was that, he has 8 years experience in Tool making compared to Thomas' 7 years, and Eich had worked 9 years before with Trico (it is notable that they did not mention, what department he worked) and Thomas only Two years. It is also notable that, respondents did not mention to the EEOC that they did not hire Thomas, because of his attendance problems or criminal history. They also submitted their hiring policy (R 1685) to EEOC which showed that they have to verify each applicant's qualifications with supporting documents. This made the EEOC believe that, respondents are telling the truth and they denied Thomas any relief, but issued right to sue letter (R 30)

B. Proceedings below-District Court:

On May 31, 2005, Thomas filed a petition in the U.S. District Court in Brownsville, Texas against all respondents except Gates (R21-30). Then he added

Gates after he found evidence that Gates has direct involvement in the case (R 396-406). During the discovery Thomas confirmed that respondents had misrepresented to the EEOC about Eich's experience. Eich's application (R1472-1473) showed that from 1986-1995 he worked with Trico as a press room supervisor (please note that he did not work as a Tool maker and not in the tool room department). Then it shows from 1995-2000 (5 years) he worked at Adtech. In the application he did not mention how many years he worked at Adtech in the Tool making field, but he wrote press room production supervisor, tool and die repair and then, 5 years. Since he left Trico as press room supervisor, there was no doubt that he started working as press room supervisor and so out of 5 years how many years he worked in the tool and die repair was not clear by looking at his application. Then the application showed that he worked at T&C Stamping from 2000 to 2003 (less than 3 years, since he joined with Trico in August 2003). So all together, his tool maker experience shown in his application was only about 3 years at T&C and few years at Adtech, but not 8 years as claimed by the respondents. His application also showed that he did not have any Journeyman license in Tool and die making. So just by comparing the applications itself Thomas was far more qualified than Eich and there was no doubt that Eich did not had the minimum qualifications advertised by Trico (R 1607-1608, 1611).

Eich testified during his deposition conducted on May 18, 2007 (R 1407) that he worked as a Heavy-equipment operator and a truck driver in the construction field for four years, before he joined at Trico in the year 1986 (R 1412). Eich affirmed many times that he was hired as a Lead person in the press

room (R 1412-1413). (As per his personnel files it showed that he joined Trico on 10/27/1986 as an Assembler/Operator/Inspector for a wage of $4.44 in the plastic molding department, R 1422. He was promoted as a Lead man in the punch presses only on 8/17/1987, R 1423) Also Eich testified that he has submitted a hand written resume but he said he do not have copy or he will not get a copy from his personnel file (R 1409-1411). The opposing counsel started testifying on behalf of Eich, to resist giving the copy of his resume (R 1409-1411). This made a serous doubt whether Eich lied that he submitted his resume. Eich testified that he started working as a press room supervisor at Adtech (same position he held at Trico before) and then moved to the tool room department in the year 1997 and started working as a Tool maker apprentice . But he testified, that he never went to School to learn tool making (R 1415) and never completed the apprenticeship. So according to his testimony at his deposition he worked 3 years at Adtech in the Tool and Die making field and about 3 years at T&C, and so he had 6 years prior experience in Tool and Die making, before he applied with Trico (R 1416). As per his testimony it was also verified that his 9 years prior work experience with Trico, he did not work as Tool maker or in the tool room department. So his prior experience with Trico, did not qualify him for the position he applied as a Tool maker. In comparison, Thomas when he worked before with Trico for 2 years, he worked as a Tool maker, in the tool room department. After his deposition, it was also clear that Trico did not follow their company procedure (R 1685, Hiring practices, policy #3 stated that all applicants will be required to submit documents supporting their qualifications) when they

hired Eich. They also did not produce Eich's interview report or his hand written resume (claimed by Eich that he submitted), or any other documents that showed that he is a Tool maker.

Thomas filed a motion for leave of Court to allow him to file a second motion to continue to obtain, mainly the personnel file of Eich from Adtech and to obtain documents regarding newly hired employees from Trico (R 1400-1446) In the motion Thomas pointed to the trial Court that when compared with the testimony of Eich (see R 1407-1420) and the documents from his personnel file, it shows that his testimony was not credible (R 1401). Thomas submitted his affidavit with the said motion which showed that, Eich started his apprenticeship at Adtech, only in the year 2000 and he was still working there when Thomas resigned from Adtech in the year 2001 (R 1406). Trico also provided a list of about 10 newly hired employees, after Thomas filed his application (R1512). As per the list most of the employees were less qualified than Thomas and also Trico once again misrepresented to the court about Eich's tool and die experience. This time they misrepresented that Eich has 17 years tool and die experience (R 1512). In order to find the truth when Eich started his apprenticeship in tool and die making and when he left Adtech actually, his personnel file was vital in this case (R 1402). But the district Judge simply denied it without a hearing and response (R 1540).

After the case was filed in the US District Court, when Trico produced the personnel file of Thomas, they have to admit the fact that Thomas had 25 years experience in Tool making. Then respondents started

telling that Thomas was not hired due to the attendance problems. But they refused to allow discovery and Thomas has to file a motion to compel. The trial judge ordered on the motion to compel Trico (at R 1394) that attendance records of other newly hired employees and also the information regarding punching clock used by employees were not relevant. It shows:

"Request for Production No. 31(B) seeks information about the attendance records of individuals hired after Plaintiff's application date in August 2003. This information is not relevant. Plaintiff resigned from his former position in April 2003; he was not terminated for his absence from work during his incarceration.

Request for production No. 32 seeks information about the clock used to time-stamp the employees' timecards at Trico. This request is not relevant to this case because this is a failure-to-hire matter. Therefore, Plaintiff's request for production is not relevant, and Defendants' objections are valid"

Trial judge after denying appellant's interrogatory on time clock, once again confirmed its finding that this case does not involve appellant's tardiness or absence from work. At R 1396 shows:
"Interrogatory No. 14 seeks information about the time clock in the tool room in Brownsville. This information is not relevant because this case does not involve Plaintiff's tardiness or absence from work."

. Respondents Trico product Corporation, Jim Gaither and John Winn, filed their motion for

summary judgment (MSJ) on June 16, 2006 (R 1448-1500). Thomas filed his response on July 6, 2006 (R1544-1768).

Thomas explained in his response (R 1544-1768) to Trico's MSJ that their legitimate non-discriminatory reason for not hiring him was false or unworthy of credence and were inconsistent. He also quoted the Supreme Court case law of, Reeves v. Sanderson Plumbing, 530 U.S. at 147, 120 S.ct 2097 (2000). As explained at R 1553, on September 4, 2004, Jim Gaither on behalf of Trico represented to EEOC that (at R 1680) Trico's reason for not hiring Thomas was that Thomas had only 7 years prior tool and die experience and only 2 years previous experience at Trico. Same time the employee they hired (they referred Eich here as employee #2, see R 1553) had 8 years prior tool and die experience and 9 years prior experience with Trico. Mr. Gaither also confirmed this as their legitimate non-discriminatory reason for not hiring Thomas (R 1683). As mentioned earlier Trico did not tell EEOC that they did not hire Thomas, because of poor attendance or criminal history. On May 16, 2006, Trico also stated in their response (R 1226-1265) to Thomas' motion to compel that leaves of absence and attendance records are not relevant (R 1230, under paragraph B).

But, Trico changed their story later. On June 16, 2006, in their MSJ (R 1448-1500), in contrary to the judge's ruling that the tardiness and absenteeism of Thomas is not relevant in this case, they brought this any way as one of the main reason for not hiring Thomas back. (R 1448-1501). At R 1454 Trico stated that they seeks trustworthy, dependable and qualified employees who value a long term relationship *(they claimed they attached exhibit H to show this policy, but*

the records shows that there was no exhibit filed with the clerk). They further stated that Thomas' application showed two years unreliability with Trico, only 6 years industry-experience which was mostly training, a pattern of short-term employment since 1996, a total employment history of less than seven years with three different employers, no high school education at all, a four month-absence from any work and a criminal history of DWI and a contempt of court. In contrast they stated that, Gary Eich was more qualified because his application referenced that he has a high School Diploma, versatility including welding skills, almost a decade of previous employment with Trico, management experience with Trico, almost twenty years of industry-experience in Brownsville, only two past employers, a history of loyalty to past employers, positive reports from past employers and no criminal records. They also stated that his mother-in-law is working with Trico and she has endorsed him and that his longevity was unquestionable and that he demonstrated strong ties to the community. In their conclusion to their motion they stated that (at R 1455) they are entitled to summary judgment because Eich was better applicant based on his superior application and appellant's habitual absenteeism. It is notable that in Trico's MSJ they did not mention about Eich's prior Tool and die experience.

In response to this, Thomas pointed to the District Court that Eich's application doe not show anything that respondents claimed. Respondents have not produced any documents that showed that Eich was loyal to the past employers, and the records showed that there was no positive reports from any of Eich's previous employers, that was claimed by

respondents. (1472-1473). The whole records in this case shows that Trico did not make an investigation in this case to find out the true experience of Eich from his previous employers, or try to get his attendance records from his immediate previous employers. Thomas pointed to the trial Court that he had 25 years of prior tool and die experience when he applied second time with Trico (R 1549-1551). He filed supporting documents with his response to prove his qualification; his resume, applications, diploma certificates, transcripts of pre-degree course from the college (after the completion of High School); Journeyman license in Tool and Die making etc. At the same time even though they claimed so many things about Eich, they have not provided any supporting documents to justify their statements or have provided any supporting document that, Gary Eich was a Tool maker, other than his employment application, which was not even clear, how many years he worked in the tool and die field with his previous employer, Adtech. Thomas asked the trial court not to consider the attendance history, since the court ruled that it is not relevant (1545). Even if it considers the attendance records, it showed that it was not the real reason, since before Thomas was incarcerated illegally, he had perfect attendance (R 1545-1546). The records provided by Trico showed that Thomas had attendance problems only in the year 2002 (R 1457-1464). Record at 1559, signed by Thomas on January 29, 2002, it shows that his attendance was average, but he mentioned that he had little bit attendance problem due to his divorce case. This is also supported by affidavit made by Cuauhtémoc Garcia, a co-worker of Thomas, made on Feb 7, 2003. He stated in his affidavit that Thomas was harassed in his divorce case and the hearings

were intentionally delayed to make attendance problem for Thomas at work (R 1547). Thomas received a warning on May 14, 2002 in which he complained to Jim Gaither that one of the reason for attendance problems is due to the fact that the company clock is 3 minutes ahead of standard time (R 1462). Even though Thomas requested Trico, but they did not correct this and Thomas affirmed that most of his tardiness was one minute late (R 1575, R 1545). Thomas received his final warning letter on November 25, 2002 (R 1463-1464). It shows that (at R 1464) he acquired 9 tardiness at the time he received this warning letter. So there was no doubt that the time clock's accuracy was a major factor in his tardiness. But respondents neglect to mention that Thomas was working hard to improve these areas as evidenced by Trico's records reflecting that after October 2002, Thomas had perfect attendance and was not tardy for the last six months of his employment (R 1460-61). Defendants did not mention Thomas' attendance to the EEOC as a reason for Trico's failure to rehire him. A reasonable jury could infer that Thomas' attendance was not an issue in the decision-making process. Thus a fact issue has been raised as to whether Trico's explanation for failure to hire Thomas is a pretext.

Both the District Court and the Appeal Court has agreed that Thomas has established a prima facie case, since he is born in India and has the ethnic character of an East in Indian ancestry and respondents hired Gary Eich a Caucasian male born in the U.S., instead of Thomas. (6a,17a)

In his response to MSJ, Thomas also pointed to the trial Court that, his affidavit showed that he was called by the nick name 'Gandhi' by his colleges and the lead person Juan Sauceda (R 1552). Declaration of

Donna Gonzalez which was attached with response, showed on paragraph 12 (R 1677), she stated that, appellant is a person of East Indian origin and an Asian by race. She further stated that, after 9/11 incident, people like Thomas have undergone hatred from some of the people in the U.S. Even at his divorce proceedings, plaintiff was discriminated because of his race and national origin. The evidence shows that he was insulted by his ex-wife's counsel, Robert Sheline, by comparing as "Taliban" (R 1581) Thomas stated that the Mr. Sheline may have connections with Jim Gaither (R 1544-1545), who issued warning letters to Thomas. Cuauhtémoc Garcia's affidavit dated Feb 22, 2006 shows that, one of the reason for Thomas' incarceration for not signing consent was that, he is from India (R 1601).

Thomas explained to the trial judge that his criminal history is not relevant to this case. He explained that his DWI is a misdemeanor happened in the year 1998 and Trico hired him in the year 2001, so it is not a valid reason (R 1549). Also he referred to his criminal report submitted to Trico on 8-4-2003 (R 1669), which proved his statement. The said record also showed that (R 1669) his contempt of court conviction is a civil case and it was dismissed on July 31, 2003. Thomas explained to the trial Court that, his contempt case for not signing consent was illegal, since the judge who ordered him to incarcerate did not had any jurisdiction, because the case was illegally transferred to his Court (Judge Limas' Court, 404th district court of Cameron County, Texas), and the Judge was fully aware that the mother has previously abducted the children (R 1546). Thomas Also stated that there was no allegation in the motion filed by his ex-wife, saying that he has to sign consent (R 1546).

Also his response further showed that the same judge who ordered to incarcerate him for not signing consent also has entered an order saying that the children can not be taken out of Cameron county, until the appeal is over (R 1599). So there was no need for the passport at that time. So the judge's order did not make any sense. Further it was unconstitutional to force some one to sign consent and it was against the policy of the International parental kidnapping act.

Thomas also explained to the Court that Eich in his previous employment with Trico he started as an operator in the Plastic injunction molding and he moved to the press room. (R 1549). Eich's application also showed that he worked with Trico as a press room employee and not a tool room employee (R 1616-1617) . As per the job description of a Tool room employee provided by Trico, it sows that operating a press, or setting up of a press is not a tool room employee's duty and also welding is not a requirement (R 1246). But it shows that building jigs and fixtures were a duty of a tool room employee (R 1246), but Mr. Eich did not had this (R 1628). Also it showed (R 1246), an employee should be able to read blue prints, but Eich never went to school for that (R 1628). The records show that, Trico provided this document in their response to Thomas motion to Compel (at R 1227). The record shows, they provided this after the statement 'Trico seeks trustworthy, dependable and qualified employees who value a long term employment relationship" (R 1227). Now this court may see that this should be the same exhibit which was missing (exhibit H) in their MSJ at R 1457, after the same statement. So there is no doubt that they intentionally did not file their exhibit 'H' to hide from the court that Mr. Eich was not qualified.

In their reply on MSJ (1769-1774), once again respondents confirmed that Thomas was not hired because of his well –documented history of attendance violations and Eich's superior application. But they also added that, Eich lack any past attendance problems (R 1773). Even though Eich departed Trico for 8 years, before he applied again, the whole records in this case shows that, Trico has not made any attempt to get the personnel file/ attendance records of Eich from his immediate previous employers, T&C and Adtech, where he worked all together for 8 years.
. At the Summary Judgment level, Thomas clearly raised facts questions about who is clearly better qualified and whether the false and inconsistent explanations given by Trico were a pretxt of an intentional discrimination.

The trial judge Hon. Hilda Tagle, completely ignored Thomas' response and exhibits and granted the MSJ (R 1775-1782). The record shows in deciding who is better qualified, she compared only the applications filed by Thomas and Eich in August, 2003. Despite her earlier finding in the order on motion to compel Trico (26a,29a) that the attendance was irrelevant in this case, when respondents raised Thomas' attendance an issue in their MSJ, the trial Court latched on to that argument and cited Thomas' attendance as rationale for granting the MSJ. The trial Court in her ruling also completely ignored the facts and arguments regarding respondent's false explanations.

Earlier in the same way, without considering Thomas' arguments or statement of facts, the trial judge also granted Tomkins plc's (R 866-874) and Gates Corporation's (R 974-981) motion to dismiss for lack of personal jurisdiction and dismissed both of

them from this lawsuit. Thomas filed a notice of appeal on Tomkins' dismissal (R 960-961). Since actions were pending against remaining parties, the said appeal was dismissed on August 8, 2006 (R 1949-1951). On February 1, 2007 (after the trial judge denied Thomas' motion to reconsider the ruling on the MSJ) Thomas filed a second notice of appeal on all the respondents and took this case to the U.S. Court of Appeals for the Fifth Circuit.

C. Proceedings below-In the Court of Appeals:

Thomas filed his Brief on July 13, 2007 (which was docketed in the U.S. Court of appeals for the 5th Circuit as cause No. 07-40114) and explained all the above and provided arguments with supporting case laws showing that the trial judge was erroneous in granting the MSJ; granting the motion to dismiss Tomkins and Gates; and abused her discretionary power in discovery rulings.

Respondents filed their response on September, 13, 2007 in the Court of Appeals. Now again they change their explanation for not hiring Thomas. Thomas hired a lawyer to represent him and the counsel filed the reply brief in the Court of Appeals on October, 1, 2007. In their brief they made a new claim that they were not aware of Thomas' past experiences or credentials (their brief at 13). Respondents made this incredible assertion although Trico had maintained Thomas' permanent personnel file and they had produced documents in the discovery, that shows Thomas' resume filed in the year 2001, showing he had 23 years experience in Tool and Die at that time; his applications; his interview report showing that, he was interviewed

and verified his qualifications and experiences etc. But it is notable that they are aware of his past attendance problems, when Thomas worked with them. Respondents argued in their brief that it did not know about Thomas' qualifications despite the fact it hired him and he worked there for 2 years and had only departed them for 4 months, before he replied for the position. Respondents did not explain why they were unconcerned about Eich's past experience and credentials since his employment with respondent Trico had ended 8 years before he applied for Thomas' position. Under the heading "Formal Training" in their chart, respondents stated that Thomas has a diploma in tool and die making from India (Respondents Brief at 5). They want to stress that Thomas has a diploma in tool and die making from India and not from here. However, on his application under "Special training" which is the closest category to the new requirement of "Formal Training," Thomas wrote "4 years advanced training in Tool & Die, CNC Machining" (R 1470). Also Thomas added "Journeyman Tool Maker" as special job skill. India was not on there. In their chart, respondents wrote that Eich had "Local on the job apprenticeship." (Res. Brief at 5). But Eich's application does not reflect that he had completed a 'local on the job apprenticeship" or any other kind of apprenticeship (R 1472-73). In fact Eich testified that he had not completed an apprenticeship (R 1627, L. 10-23). Respondents stressed on to local to infer that any training in Brownsville must be superior to that in India. Respondents in their brief for the first time claimed Thomas' alleged prison time was a reason for respondents' failure to rehire him (Brief at 4,5,13). This reason was patently false and unworthy of

credence because Thomas has never been to prison and has never convicted of a felony. Only he was held in contempt by the Family law Judge, for refusing to sign consent on the passport application for his minor child, which would have allowed his children to be taken away to another country. After this case was taken to the US Court of Appeals, on Feb. 15, 2007, the 13th Court of Appeals in Corpus Christi, in their memorandum opinion ruled that (Please ref. case No. 13-02-00504-CV, filed in the 13th Court of Appeals, Corpus Christi) the family law Judge (Hon. Abel Limas of the 404th District Court) did not had jurisdiction over the case and he was ordered to transfer back the case to the original court (the 357th District Court). The said opinion of the Court of appeals was attached as Appendix 19, page 8, with Thomas' brief. (Also please visit www.justiceisblind.info, for more details). So it was clear that Thomas was innocent in that case and the respondents should have sympathy on Thomas for staying in jail to save his children, from being abducted. Respondents knew about Thomas' child custody battle and subsequent incarceration because he wrote to Jim Gaither about it (R 1465-69). Respondents also falsely content in their brief that Thomas had 2 DWI convictions (Brief at 5). Thomas had one misdemeanor conviction in 1998 which he had disclosed to respondents in his 2001 employment application before he started working for them (R 1661-62). Thomas' DWI conviction and probation served did not prevent respondents from hiring Thomas in 2001. So why should he be disqualified for the same reason in the second time. So DWI conviction was not the real reason.

Respondents also claimed in their brief that they do not have to do a rigorous screening process and that they basically will only look at employment applications (Respondents Brief at 14-15). This was also a new claim, which they did not make with EEOC or with the District Court. Thomas argued in his reply brief that, in contrary to this, as per Trico's "Hiring Practices" all applicants are required to submit documents supporting their qualifications (R 1685). Hiring practice No.7 showed that applicants must go through a screening and that, managers and supervisors are responsible to hire the best candidate (R 1685). This would have required interviews and obtaining documents from Eich to prove his qualifications to be hired as a Tool maker. But they have not provided any.

Respondents completely ignored and failed to answer Thomas' statements and arguments regarding their false and inconsistent explanations for the legitimate reason for not hiring him. Also Respondents in their brief failed to respond to Thomas' arguments in his brief that respondent Trico coerced employees to sign declarations which contained false statements. One of them Guadalupe Cardenas, admitted that he was asked to sign a Declaration attesting to facts that were not within his personal knowledge (R 1690-92, 1720, 1723-24). Juan Sauceda made a false Declaration that he is a Toolmaker, and not a supervisor, and that he did not call Thomas "Gandhi"(R 1690). But Cardenas testified at his deposition that Juan Sauceda is a Supervisor (R 1704, L. 13-17).

Thomas also pointed to the Appeal Court that the cases cited by respondents are not distinguishable and controlling. None of the case discussed a disparity of 4-

6 times difference in qualifications like in this case. More important, respondents were silent on the subject of their false explanations pointed out by Thomas in his brief.

Thomas argued in his reply brief filed in the Court of appeals that given Respondents' inconsistent explanations for refusing to hire him and the timing of its changing rationale, a fact finder could conclude that Respondents' "asserted justification is 'false" or "unworthy of credence." And quoted the *Reeves* case. He further argued, as the 5th Circuit previously has explained, "evidence of the prima facie case plus pretext may, and usually does, establish sufficient evidence for a jury to find discrimination , and he quoted, " *Evans v. City of Bishop*, 238 F.3d 586,592 (5th Cir.2000).

Thomas wrote this argument and several other arguments and all the facts stated above in his brief and reply brief and asked the Appeal Court to reverse the granting of summary judgment on respondent Trico, Jim Gaither and John Winn. And also made arguments with supporting evidence against the dismissal of Gates and Tomkins and asked the Court to reinstate them..

The Appeal Court, without allowing a hearing entered its opinion on October 26, 2007. This opinion was shocking. It simply cited the statements made by the respondents like a "parrot" and affirmed the district court's order. The opinion (1a-8a) started with statement about Thomas' attendance problems, which was quoted by the respondent and then it found this as one of the legitimate reason for not hiring Thomas. It did not consider Thomas' argument that the trial court had declared attendance history as irrelevant and even it consider this, Thomas had perfect attendance

for the past 6 months before he was illegally incarcerated. The ruling shows that it did not evaluate whether Thomas was innocent in the incarceration, but it simply stated Thomas was held in contempt of court in a child custody matter and was incarcerated indefinitely. Those who read this opinion will think that Thomas has done a severe crime like a murder or a sexual assault, for to be incarcerated indefinitely. The opinion further shows that it simply compared the applications of Thomas and Eich and said both had similar experience and qualifications. It just ignored the supporting documents and statements and arguments filed by Thomas that showed that he was 6 times qualified than Eich. Even though the disparity in qualifications was so wide, the Appeal Court quoted the *Price* case, which was not even 25% closer to this case in disparity. The opinion shows that it did not even review Thomas' arguments and evidence presented against the respondents false and inconsistent explanations. For any standard, this Court can see that, this opinion entered was unconstitutional and depart from the summary judgment standards set by this Court before. The opinion also stated that, since Thomas' claims against all defendants fail on the merits, it declined to reach the question of whether personal jurisdiction exists regarding Tomkins plc and Gates Corporation. Thomas also filed a petition for rehearing en banc, which was denied by the Appeal Court on November 26, 2007. Thomas is now filing this petition for certiorari within 90 days of the said denial.

REASONS FOR GRANTING THE PETITION

I. THIS CASE RAISES THE CRITICALLY

IMPORTANT QUESTION WHEATHER A PERSON CAN BE COERCED TO SIGN CONSENT

In the history of the United States of America this is the first time that a person is being coerced to sign a consent on the passport application of his minor child, by ordering to incarcerate Thomas, until he signs consent. So the review of this issue is of public importance. Since Thomas lost his job due to this incarceration, which lasted for about 4 months, it will give guidance for the lower courts, whether Thomas was innocent.

Thomas requests this Court to consider his pleadings liberally, since he is a pro-se.

The Fourteenth Amendment to the United States Constitution provides, in relevant part: No state shall . . . deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws (37a-40a). By coercing to sign consent Judge Limas has clearly violated this constitutional right of Thomas. Moreover this case was illegally transferred to Judge Limas' Court, so he did not even have any jurisdiction to hear this case. It is also an issue, whether even if the Judge had any jurisdiction, can a State Judge (or even a Federal Judge) order like this?

Statement of consent form (DS-3053) can be found at; http://www.state.gov/documents/organization/80106.pdf. The document shows that it has to be made under penalty of perjury. So even if Thomas is forced to sign, he will be lying under oath.

Section 236 of the Admiral James W. Nance and Meg Donovan Foreign Relations Authorization Act, Public

*Law 106-113, 113 Stat. 1501A-420 (22 U.S.C. 213n) (``2-Parent Consent Statute'')* provides that: the Secretary shall require documentary proof of both parents' or the legal guardian's consent before issuing passports to children under age 14 ``under penalty of perjury.'' The requirement was added as a measure to prevent the use of the United States passport in international child abduction, and was implemented by Section 51.27(b) of Title 22, Code of Federal Regulations (CFR) (published at 66 Fed. Reg. 29904, June 4, 2001). Section 51.27(b)(2) provides that both parents must execute a passport application on behalf of a minor under age 14 or, if only one parent or a legal guardian executes the application, such parent or guardian must provide documentary evidence that he or she is the sole parent or has sole custody of the child or that he or she has the non-applying parent's or guardian's consent, if applicable, to the issuance of the passport. So it was clear that the Federal Government brought the requirement of signing consent, in the year 2001, to prevent child abduction. In all aspects, the ruling clearly defies common sense. Since there is no opinion or case laws can be found for this issue, the review of this issue is of public importance.

II. THE DECISION BELOW CREATES A DIRECT CONFLICT WITH THE SUPREME COURT DECISION IN *REEVES*..

In granting summary judgment, the lower court departed from the accepted standard of review set by this Court in *Reeves v. Sanderson Plumbing Products, Inc.*, 120 S.Ct. 2097, 68 USLW 4480, (U.S., Jun 12, 2000). This departure was found in the Fifth Circuit Court of Appeals ruling as well as in the District court. The Fifth Circuit's decision in

affirming the summary judgment also was in conflict of their own standards set in several of their own opinions.

In reviewing summary judgment, the court must view the evidence presented in light most favorable to the party opposing the motion. *Rhodes v. Guiberson Oil Tools*, 75 F.3d 959 (5th Cir. 1996). In the case of *Reeves v. Sanderson Plumbing Products, Inc.*, the unanimous U.S. Supreme Court reaffirmed that "the standard for granting summary judgment 'mirrors' the standard for judgment as a matter of law, such that the inquiry under each is the same." *Reeves*, at 2110. This Honorable Court held that, although all of the evidence should be reviewed by the court, not all evidence should be given weight. The court "must disregard all evidence favorable to the moving party that the jury is not required to believe. See *Wright & Miller*, at 299. That is, the court should give credence to the evidence favoring the nonmovant as well as that 'evidence supporting the moving party that is uncontradicted and unimpeached, at least to the extent that evidence comes from disinterested witnesses.' " *Reeves*, at 2110. In the present case, jury question are present because the petitioner presented evidence that, when taken as a whole, created fact issues as to whether Thomas is "clearly better qualified" and whether the respondent's "asserted justification is false" or "unworthy of credence."

"[T]he court must review the record taken as a whole.' " Reeves v. Sanderson Plumbing Prods., Inc., 530 U.S. 133, 150, 120 S.Ct. 2097, 147 L.Ed.2d 105 (2000) (quoting Matsushita Elec. Indus. Co., 475 U.S. at 587, 106 S.Ct. 1348); see Riverwood Int'l Corp. v. Employers Ins. of Wausau, 420 F.3d 378, 382 (5th

Cir.2005).;

Pointing to clearly superior qualifications is one way to demonstrate intentional discrimination, but it is not the only way. *See Julian v. City of Houston, Tex.*, 314 F.3d 721, 728 (5th Cir.2002).

This Court may see that the 5th Circuit Court and the district Court did not follow the summary judgment standard established in the above cases. They did not review the whole records or did not consider the false explanations made by the respondents. If this Court review the whole record it can see that Thomas is a licensed tool maker who has 25 years of tool making experience, with supporting documents and Eich had only 4 years experience with no education and no license in Tool and die and no documents to support his education or experience. If the respondents had admitted about Thomas true experience from the beginning and then if they allow discovery and brought the attendance records it would have been a different situation. But they never want to admit the fact that Thomas had 25 years of Tool making experience and held Journeyman License in Tool and Die making. In order not to admit this, they kept on changing their story. They told EEOC that Thomas had only 7 years experience and Eich had 8 years experience in Tool making. But they did not tell EEOC that Thomas held a Journeyman License and Eich not. They did not tell EEOC that Thomas was not hired because of his attendance problems or criminal records. In the district Court, when Eich testified that he had only 6 years experience and never went to school or never completed an apprenticeship they changed their

story, saying that Thomas was not hired because of his well documented history of attendance violations and Eich's superior application (R 1769-1774). Even if this court only look the latest applications filed by both applicants, it can see that Eich had no Jorneyman License in Tool making and his 8 years experience in his application, claimed by respondents is only an assumption. (After Eich's deposition it is already proven, he did have 8 years experience). But even Thomas' second application showed that he had 11 years experience and completed 4 years advanced training in Tool and Die making and he held Journey man License.

Now if this Court look at their explanation to the Court of Appeals, it can see that they again changed it. Their story that, they were not aware of Thomas' previous experiences and credentials. But they have no problem in remembering Thomas' attendance records in the old file. No reasonable person can believe this story since they have produced Thomas' interview report and his previous resume and application, which showed that Thomas has 23 years experience in Tool making when he joined with Trico in the year 2001. But they can remember about Eich who betrayed them and left the company in the year 1995.

This unexplained inconsistency was further evidence from which a jury could infer that Trico's proffered rationale is pretextual. *See*; Gee v. Principi, 289 F.3d 342, 347-48 (5th Cir.2002) (determining summary judgment was improper where the plaintiff produced evidence that the employer's explanation for her non-selection had been inconsistent). *Also*

see; Burrel, 482 F.3d at 414 (5th Cir. 2007)

. Also a reasonable factfinder could conclude that Trico's asserted justification for hiring Eich (his superior application and lack of any past attendance problem) is "unworthy of credence" and a pretext for intentional discrimination. Reeves v. Sanderson Plumbing Prods., Inc., 530 U.S. 133, 147, 120 S.Ct. 2097, 2108, 147 L.Ed.2d 105 (2000) ("Proof that the defendant's explanation is unworthy of credence is simply one form of circumstantial evidence that is probative of intentional discrimination, and it may be quite persuasive.").

As per the summary judgment standard this was enough to deny the motion and if court has to grant the Summary Judgment, respondents should have proved their claim as a matter of law, which they failed, when reviewing the whole record. But the trial court and the appeal court did not follow this well established laws and so there is reason to grant this petition.

III. THE DECISION BELOW VIOLATED THOMAS' 14TH AMENDMENT RIGHTS.

Under the Due process of the 14th Amendment of United States Constitution, a person has the right to be heard (37a-40a). In this case, by completely ignoring Thomas' arguments, statement of facts and supporting evidence, it is a question whether the 5th Court of Appeals and the District Court has violated this constitutional right. So this is an important question of law, and Thomas request this Court to review this case and enter an opinion and grant this

petition.

IV. THE RULING ON ATTENDANCE RECORDS VIOLATED THOMAS SUBSTANCIAL RIGHT TO DISCOVERY.

Respondents resisted discovery on the attendance records of Thomas and other newly hired employees and also the trial Court denied Thomas' motion to compel respondents and it made the finding that the attendance records were not relevant in this case. And for the reason it said Thomas was not terminated for absence from work and this case is a failure-to –hire matter (18a). But respondents brought the issue of attendance in their MSJ and it shows that the trial judge and the appeal court allowed this to come into evidence and cited this as one of the main reason for not hiring Thomas. Thomas argued to the Appeal Court that the district Court abused its discretion by its clearly erroneous evidentiary ruling which affected Thomas' substantial rights. The trial Court erred in ruling that Trico did not have to answer Thomas' discovery requests related to his attendance at the company. The trial court's erroneous evidentiary ruling denied Thomas access to the relevant and probative discovery requests regarding his employment to which he was entitled, and thereby precluded Thomas from raising a fact question on that issue. Thomas argued in his reply brief that, the trial court's error was not harmless because it affected a substantial right of Thomas to discover the case and put on evidence of pretext in order to defeat a motion for summary judgment. *See Compaq Computer Corp. v. Ergonome Inc.*, 387 F.3d 403,408 (5th Cir.2004); *see*

FED.R.EVID.103(a). The exclusion of the said evidence was not harmless, because the court cannot say with positive assurance that the jury would have decided the same way had it been admitted. *See EEOC v. Manville Sales Corp.*, 27 F.3d 1089,1095 (5th Cir. 1994) ("[W]e cannot say with conviction that this [excluded] evidence would not have affected the jury's determination.") So it shows that Thomas was prejudiced by the trial Court's erroneous ruling, which affected Thomas' substantial rights to do discovery, especially when the Judge changed her mind. Thomas also asks this Court, whether a Judge can rule against its own findings. Not many Judges has done like this. So the review on this issue also has public importance. So this is also a reason to grant this petition.

CONCLUSION

The Petition for certiorari should be granted

Respectfully Submitted

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February 25, 2008.

APPENDIX
TABLE OF CONTENTS

1. Opinion entered by the U.S. Court of Appeals for the 5th Circuit, entered on October 26, 2007. ----------(1a-8a)
2. Order denying the petition for rehearing en banc, filed on November 26, 2007------ (9a-10a)
3. Order and Opinion entered by the U.S. District Court, for the Southern District of Texas, Brownsville, Division, on July 25, 2006 (Michael K. Milby, Clerk)----------(11a-21a)
4. Order (Judgment) entered by the U.S. District Court, for the Southern District of Texas, Brownsville, Division, on July 25, 2006 (Michael K. Milby, Clerk)---------- (22a)
5. Order (on motion to compel Trico) entered by the U.S. District Court, for the Southern District of Texas, Brownsville, Division, on May 31, 2006 (Michael K. Milby, Clerk)---------- ---------- (23a-30a)
6. Order entered in Cause No. 2001-12-5216-E, In the interest of Gloria Thomas and Ashley Thomas, on April 3, 2003, by Abel Limas. (Filed on April 3, 2003, by Aurora De La Garza, District Clerk, Cameron County, Texas) ----------(31a-32a)
7. Article-Thanks Abel Limas---------- (33a-34a)
8. Article-Americas Most wanted yields few tips on Amit Livingston---------- (35a-36a)
9. Constitution Topic-Due Process------- (37a-40a)
10. Supplementary Information regarding signing consent ----------(41a-42a)

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT
FILED
October 26, 2007

No. 07-40114
Summary Calendar

ROBERT THOMAS

Plaintiff-Appellant

v.

TRICO PRODUCTS CORP; TOMKINS PLC; JIM GAITHER; JOHN WIN; GATES CORPORATION

Defendants-Appellees

Appeal from the United States District Court
for the Southern District of Texas
USDC No.1:05-CV-174

Before KING, DAVIS, and CLEMENT, Circuit

Judges.

PER CURIAM:*

Robert Thomas ("Thomas") appeals the district court's grant of the defendants' motion for summary judgment.[1] We AFFIRM

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* Pursuant to 5TH CIR. R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR. R. 47.5.4.

[1] Thomas originally sued five defendants for employment discrimination. On January 12, 2006 and March 28, 2006, the district court dismissed the claims against two of the defendants, Tompkins PLC and Gates Corporation, respectively, for lack of personal jurisdiction. Thomas appeals those dismissals here; however, because his claims against all defendants fail on the merits, we decline to reach the question of whether personal jurisdiction exists regarding Tompkins PLC and Gates Corporation. The remaining defendants, Trico Products Corporation, Jim Gaither, and John Win, are collectively referred to as "Trico."

Trico hired Thomas as a tool maker in 2001. Thomas, who is from India, demonstrated chronic attendance problems, resulting in multiple warnings and, ultimately, suspension. On January 26, 2002, Trico administered a written warning to Thomas regarding his attendance. Thomas acknowledged his problem with poor attendance, but proceeded to incur twenty-one unexcused incidents of tardiness or absences after the written warning. On April 24, 2002, Trico issued a second written warning regarding Thomas's attendance, but the problems persisted. Finally, Trico suspended Thomas for three days on November 25, 2002.

On April 2, 2003, Thomas was held in contempt of court in a child custody matter and was incarcerated indefinitely. He had no available annual leave and had been told by Trico that any further absences would result in his discharge. Rather than being fired, he voluntarily resigned from Trico. On August 4, 2003, he reapplied for employment with Trico as a tool maker. Although Trico told Thomas that another candidate had applied for the job, Thomas admits that he did not include all of his experience on his application, thinking that the application process was a "formality." Trico considered both applicants, who had similar experience and education, including having worked for Trico, and hired the other applicant, Gary Eich ("Eich").

Thomas filed a complaint with the Equal Employment Opportunity Commission ("EEOC"), alleging that Trico discriminated against him on the

basis of his national origin and race when they hired Eich instead of him. The EEOC dismissed Thomas's case and informed him on February 28, 2005 of his right to sue in federal court. Thomas filed a lawsuit against Trico in federal district court on May 31, 2005, alleging employment discrimination under 42 U.S.C. § 1981 and Title VII of the Civil Rights Act of 1964("TitleVII"),as amended, 42 U.S.C. §§ 2000e-2000h-6. On July 25, 2006, the district court granted summary judgment in favor of Trico. Thomas now appeals that ruling.

This Court reviews a district court's grant of summary judgment de novo, applying the same standards as the district court. Strong v. Univ. Healthcare Sys., L.L.C., 482 F.3d 802, 805 (5th Cir. 2007). Summary judgment is proper when there exists no genuine issue of material fact and the movant is entitled to judgment as matter of law. FED. R. ON. P. 56(c). "The evidence and inferences from the summary judgment record are viewed in the light most favorable to the nonmovant." Minter v. Great Am. Ins. Co. of N. Y., 423 F.3d 460, 465 (5th Cir. 2005). To survive a summary judgment motion, the nonmovant "need only present evidence from which a jury might return a verdict in his favor." Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 257 (1986).

Title VII disallows discrimination in hiring or termination of an individual based on his race, color, religion, sex, or national origin. 42 U.S.C. § 2000e-2(a)(1). In cases where no direct evidence exists, we analyze discrimination claims under Title VII using the burden-shifting framework created by the

Supreme Court in McDonnell Douglas Corp. v. Green, 411 U.S. 792 (1973).[2] In cases involving termination for workplace rule violations, an individual must first establish a prima facie case for discrimination. Id. at 802. Thomas can establish a prima facie case for discrimination if he can show that (1) he is a member of a protected class, (2) he was qualified for the position for which he applied and for which the employer was seeking applicants, (3) he was not hired despite his qualifications, and (4) someone outside of the protected class was hired instead. Crawford v. U.S. Dep't of Homeland Sec., Nos. 06-11163, 06-11387, 2007 WL 2348661, at *6 (5th Cir. Aug. 16, 2007); Septimus v. Univ. of Houston, 399 F.3d 601, 609 (5th Cir. 2005). If a prima facie case for discrimination can be established, then the burden shifts to the defendants to rebut Thomas's case by articulating a legitimate, nondiscriminatory reason for his rejection. McDonnell Douglas, 411 U.S. at 802. If the defendants present such a reason, then the burdon shifts back to Thomas to show that the defendants' reasons for refusing to hire him are not true, but are mere pretexts for discrimination, or that the reasons are true, but his national origin was a motivating factor. McDonnell Douglas, 411 U.S. at 804-05.

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[2] The analysis for claims under § 1981 and Title VII employ identical burden-shifting frameworks for evaluating discrimination claims, so we analyze Thomas's claims under both simultaneously. See Jones v. Robinson Prop. Group, L.P., 427 F.3d 987, 992 (5th Cir. 2005); Raggs v. Miss. Power & Light Co., 278 F.3d 463, 468 (5th Cir. 2002).

Here, Thomas succeeds in establishing a prima facie case for discrimination based on his national origin. Thomas is a member of protected class because of his ancestry and national origin. He applied for an advertised job for which he was qualified. Trico did not hire him, but instead hired someone outside of Thomas's protected class. To rebut Thomas's prima facie case, Trico articulates legitimate, nondiscriminary reasons for rejecting his application. Trico contends that Eich's reliability, loyalty, ties to the community, and demonstrated longevity in the field of tool- and die-making without gaps in employment made him a superior candidate compared to Thomas, who, although possessed similar qualifications, nevertheless had a less stable employment record, a criminal history, and was on his final warning for attendance before he resigned from Trico. Trico had employed both Eich and Thomas before, so it was in a unique position to evaluate their respective work ethics and abilities.

Shifting the burden of proof back to Thomas, he may prove that Trico's reasons for not hiring him were pretextual by demonstrating that he was "clearly better qualified" than Eich. Manning v. Chevron Chem. Co., 332 F.3d 874, 882 (5th Cir. 2003). Thomas attempts to show that he was better qualified than Eich by presenting his educational background and his technical skills as a tool-maker, even though he admits he did not list all of these qualifications on his application. He argues that Eich's work experience and education fail to meet the minimum qualifications listed in Trico's job

advertisement. We have held, however, that "better education, work experience, and longer tenure with the company do not establish that [an applicant] is clearly better qualified," meaning that an employer has a right to depart from published job requirements and to value certain attributes over others. Price v. Fed. Express Corp., 283 F.3d 715, 723 (5th Cir. 2002). "[T]he employer's judgment as to qualifications will not be probative of the issue of a discriminatory motive unless the qualifications are so widely disparate that no reasonable employer would have made the same decision." Deines v. Tex. Dep't of Protective and Regulatory Servs., 164 F.3d 277, 282 (5th Cir. 1999). Ultimately, the law requires only that the employer's decision is "somewhere within the realm of reason." Id.

When viewing the two applications before it, Trico found the work experience between Thomas and Eich to be similar. Trico hired Eich based upon his observed work ethic, acceptable attendance record, and lack of criminal history. We hold that Thomas has failed to disprove Trico's legitimate, nondiscriminatory explanation that Eich was better qualified for the position. He also has not presented other evidence of pretext for discrimination, nor has he shown that his national origin was a motivating factor in Trico's hiring decision.[3]

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[3] Thomas raises issues for appeal in his brief regarding the district court's decisions on discovery that are outside the scope of this proceeding and are not enumerated in his notice of appeal. "Rule 3(c) of the Federal Rules of Appellate Procedure

No. 07-40114

Therefore, the judgment of the district court is

AFFIRMED

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requires that the notice of appeal specify the order from which the appeal is taken." Hinsley v. Boudloche (In re Hinsley), 201 F.3d 638, 641 (5th Cir. 2000). Therefore, we decline to address those arguments.

IN THE UNITED STATES COURT OF APPEALS

FOR THE FIFTH CIRCUIT

FILED

NOV 26 2007

No. 07-40114

ROBERT THOMAS

Plaintiff – Appellant

v.

TRICO PRODUCTS CORP; TOMKINS PLC; JIM GAITHER; JOHN WIN; GATES CORPORATION

Defendants- Appellees

Appeal from the United States District Court for the Southern District of Texas, Brownsville

---

ON PETITION FOR REHEARING EN BANC

(Opinion 10/26/07, 5 cir. ,_____,_____,_____F.3d____)

Before KING, DAVIS, and

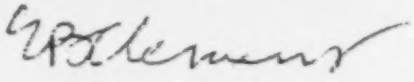
CLEMENT, Circuit

Judges. PER CURIAM:

(x) Treating the Petition for Rehearing En Banc as a Petition for panel Rehearing, the Petition for Panel Rehearing is DENIED. No member of the panel nor judge in regular active service of the court having requested that the court be polled on Rehearing En Banc (FED. R. APP. P. and 5Th CIR. R. 35) , the Petition for Rehearing En Banc is DENIED.

( ) Treating the Petition for Rehearing En Banc as a Petition for Panel Rehearing, the Petition for Panel Rehearing is DENIED. The court having been polled at the request of one of the members of the court and a majority of the judges who are in regular active service and not disqualified not having voted in favor (FED. R. APP. P. and 5TH CIR. R. 35) , the Petition for Rehearing En Banc is DENIED.

ENTERED FOR THE COURT:



UNITED STATES CIRCUIT JUDGE

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
BROWNSVILLE DIVISION

ROBERT THOMAS,	§	
Plaintiff,	§	
	§	
v.	§	**CIVIL ACTION**
	§	**NO. B-05-174**
TRICO PRODUCTS	§	
CORPORAION, JIM	§	
GAITHER AND JOHN	§	
WINN	§	
	§	
Defendants.	§	
	§	

ENTERED
JUL 25 2006

ORDER & OPINION

BE IT REMEMBERED that on July 24th 2006, the Court considered Defendants' Motion for Summary Judgment [Dkt. No.127].

Introduction

This is an employment discrimination suit filed by Plaintiff Robert Thomas against his former employer, Trico Products Corporation ("Trico") alleging race, ethnicity, and national origin discrimination.

Factual and Procedural Background

Plaintiff alleges that his former employer, Trico, discriminated against him based on his ethnicity and

national origin when he was not rehired following a period of incarceration. The employer contends that Trico hired a better qualified candidate for the position , in part, because Plaintiff was frequently absent or tardy during his years of employment. Defendants contend that Plaintiff was offered a choice at the time of his incarceration: either resign voluntarily or be terminated. Plaintiff resigned voluntarily after using all of his vacation days to cover his absences during his incarceration. The parties disagree about whether the Defendants agreed to rehire Plaintiff following his incarceration or whether Defendants encouraged Plaintiff to reapply at that time. Plaintiff and other applicants applied for an open position in August 2003, and Trico selected one of the other applicants over Plaintiff.

Plaintiff blames his divorce for his frequent absences during his prior employment with Trico. During the divorce and custody action in state court, Plaintiff refused to consent to a passport application for his seven-year-old daughter as part of a state court divorce and custody action, and the judge ordered Plaintiff incarcerated indefinitely unless he signed the application. Plaintiff was incarcerated on April 3, 2003 and released on July 31, 2003, despite his failure to comply with the court's instructions regarding the passport application. The employment discrimination claims in this case arose following Plaintiff's resignation from Trico Products Corporation on April 17, 2003 and Plaintiffs August 2003 application. After Defendants refused to hire Plaintiff, Plaintiff timely filed a charge with the Equal Employment Opportunity Commission ("EEOC") and the Texas Human Rights Commission

("THRC"). After completing the EEOC process, Plaintiff filed this action. Plaintiff brings claims under Title 42 United States Code section 2000e(5) ("Title VII") and under Title 42 United States Code section 1981 ("§ 1981").

Plaintiff alleges that Trico and two Trico employees refused to hire him following his incarceration based on his ethnicity and national origin. Plaintiff claims that other employees have been permitted to take extended leaves and return to work. Plaintiff believes that Defendants did not permit him to take a leave during his incarceration and did not rehire him based on the fact that he was born in India and is Indian. Plaintiff also describes the failure to rehire him as being based on "East Indian ancestry" and "ethnic characteristics" [Dkt. No. 1]. Plaintiff alleges that Defendants told him at the time of his resignation that he would be rehired when he reapplied. Additionally, Plaintiff contends that an opening for the same or a substantially similar job existed at the time of his application in August 2003; however, he states that other individuals were hired who were not Indian or from India.

The parties agree that Robert Thomas and Gary Eich submitted applications to Trico in August 2003. Trico offered Eich a position as Tool Maker on August 18, 2003 [Dkt. No. 133, Ex. 8]. According to Thomas' application submitted on August 4, 2003 [Dkt. No. 127, Ex. F], Plaintiff had previously worked for Trico for two years, had been convicted of a criminal offense, had earned a diploma in tool and die making in India, and had worked as a tool maker for approximately seven years total with three differentcompanies. The criminal offense report

submitted with Plaintiffs application listed one conviction for DWI in 1998 and the April 2003 incarceration for civil contempt in the custody matter [Dkt. No. 133, Ex. 14]. Additionally, in his deposition, Plaintiff confirmed the DWI conviction and added that he had been "arrested maybe two or three other times" for assault and interference with child custody [Dkt. No. 127, Ex. H, p. 60-61]. According to Eich's application on August 1, 2003 [Dkt. No. 127, Ex. G], Eich has previously worked for Trico for nine years in the press room, had no criminal convictions, had worked in tool and die repair at T & C Stamping and AdTech from approximately 1995 until 2003. In his deposition, Eich testified that he had seven years of experience in tool and die repair [Dkt. No. 133, Ex. 9, p. 47], including an apprenticeship during his years of working at AdTech [Dkt. No. 133, Ex. 9, p. 18].

Defendants contend they had legitimate, non-discriminatory reasons for selecting Gary Eich over Plaintiff to fill the Tool Maker position in the Brownsville shop. In particular, Defendants cite Thomas' attendance problems, frequent tardiness, recent voluntary resignation, and criminal history as reasons they did not select him to fill the open position. Additionally, Defendants note Eich's reliability, versatility, prior employment with Trico, positive references, and ties to the community as reasons he was chosen.

Summary Judgment Standard

Summary judgment shall be granted if the record, taken as a whole, "together with affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Fed. R. Civ. P.

56(c). Factual controversies, if any exist, are resolved in favor of the nonmoving party. See Little v. Liquid Air Corp., 37 F.3d 1069, 1075 (5th Cir. 1994) (en banc); Hunt v. Cromartie, 526 U.S. 541, 552 (1999). The party making a summary judgment motion has the initial burden of informing the court of the basis for its motion and identifying those portions of the pleadings and discovery documents that demonstrate the absence of a genuine issue of material fact. See Celotex Corp. v. Catreff, 477 U.S. 317, 325 (1986). "[T]he burden on the moving party may be discharged by 'showing' . . . that there is an absence of evidence to support the nonmoving party's case." Id.; see also Colson v. Grohman, 174 F.3d 498, 506 (5th Cir.1999). Although the party moving for summary judgment must "demonstrate the absence of a genuine issue of material fact," Celotex Corp., 477 U.S. at 323, the party "need not negate the elements of the nonmovant's case." Little, 37 F.3d at 1075 (citing Celotex, 477 U.S. at 323).

If the moving party meets this burden, the non-movant then must designate specific facts, beyond the pleadings, showing there is a genuine issue for trial. See Fed. R. Civ. P. 56(e); see also Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 252 (1986); Little, 37 F.3d at 1075 (citing Celotex, 477 U.S. at 325). "Unsubstantiated assertions" or "mere allegations or denials" will not adequately cast doubt on material facts at issue. See id. Likewise, the nonmovant must present more than a "mere scintilla" of evidence. See Davis v. Chevron U.S.A., Inc., 14 F.3d 1082, 1086 (5th Cir. 1994). The evidence must be viewed in the light most favorable to the nonmovant. See Whelan v. Winchester Prod. Co., 319 F.3d 225, 228 (5th Cir. 2003); Walker v.

Thompson, 214 F.3d 615, 624 (5th Cir. 2000). Summary judgment should be granted "when the nonmoving party fails to meet its burden to come forward with facts and law demonstrating a basis for recovery that would support a jury verdict." Little, 37 F.3d at 1071.

Analysis

In a Title VII action, the plaintiff has the burden of proving a prima facie case of discrimination by a preponderance of the evidence. McDonnell Douglas Corp. v. Green, 411 U.S. 792 (1973). Plaintiffs claims should be analyzed as a failure-to-hire case. In a case alleging discriminatory failure to hire, the plaintiff must show that (1) he is a member of a protected group; (2) he applied for a position for which he was qualified and for which the employer was seeking applicants; (3) despite his qualifications, he was not selected for the position; and (4) after the employer declined to hire the plaintiff, an individual not in the protected class was selected to fill the position. Celestine v. Petroleos de Venezuella SA, 266 F.3d 343, 354-55 (5th Cir. 2001). After the plaintiff establishes a prima facie case, the defendant must produce a legitimate, non-discriminatory reason for the hiring decision. Id. If the defendant succeeds in producing such a reason, the plaintiff must prove the reason was a pretext. Id.

Courts analyze Section 1981 claims under the McDonnell Douglas burden-shifting framework as well. Patterson v. McLean Credit Union, 491 U.S. 164, 186 (1989); see Kokes v. Angelina College, 220 F. Supp. 2d 661, 665 (E.D. Tex. 2002). In a failure-topromote claim under § 1981, plaintiff must establish the same elements to prove a prima facie

case as under Title VII. Wheeler v. BL Development Corp., 415 F.3d 399, 405 (5th Cir. 2005). Therefore, the Court will analyze all of the Plaintiffs claims under this same framework.

In order to establish a prima facie case, Plaintiff has shown that he is a member of a protected group because of his ancestry, East Indian, and national origin, India [Dkt. No. 26]. He applied for the position of tool maker that Defendant Trico advertised in The Brownsville Herald on July 20, 2003 [Dkt. No. 133, Ex. 5]. Plaintiff was qualified by education and experience for the position, and he had held the same position prior to his resignation [Dkt. No. 127]. Plaintiff was not hired. Instead, Trico hired Gary Eich, a Caucasian man born in the United States, thus, not a member of the protected class [Dkt. No. 127]. Therefore, Plaintiff has met his burden to establish a prima facie case of discrimination.

Under the McDonnell Douglas burden shifting framework, when the Plaintiff has established a prima facie case of discrimination, the defendant has a burden of production to show a legitimate, non-discriminatory reason for the hiring decision. 411 U.S. 792 (1973). Trico indicates that Eich had a longer and more reliable past work history with the company than Thomas [Dkt. No. 127]. Plaintiff's tardiness and absenteeism during his two year tenure at Trico led to verbal and written warnings that were documented by his supervisors [Dkt. No. 127, Ex. A, B, C, and D]. Additionally, Plaintiff had a criminal history while Eich did not [Dkt. No. 127]. Although Plaintiff had many years of experience as a tool maker and had completed formal training for such a position, Eich also had experience in tool and

die repair and had participated in a local on-the-job apprenticeship. While Trico's advertisement described the desired technical expertise and work experience, Trico also valued reliability, dependability, and timeliness in its prospective employees [Dkt. No. 134].Trico has shown that Plaintiffs poor attendance and tardiness, his criminal history, and his recent resignation provided legitimate, non-discriminatory reasons for opting to hire Gary Eich instead of Robert Thomas. Once a defendant has produced a legitimate, non-discriminatory reason, the plaintiff has the burden of proving that the reason was pretextual.

Showing that the applicant who was not hired was "clearly better qualified" than the person hired is enough to prove that the employer's reason was pretextual. Price v.Federal Express Corp., 283 F.3d 715, 723 (5th Cir. 2002). The "clearly better qualified"standard is high, requiring that "no reasonable person, in the exercise of impartial judgment, could have chosen the candidate selected over the plaintiff for the job in question." Barnes v. United States Dept. of the Navy, 95 Fed. Appx. 46, 50 (5th Cir. 2004)(citing Celestine v. Petroleos de Venezuella SA, 266 F.3d 343, 357 (5th Cir. 2001)). Unless the disparities in qualifications "are so apparent as to virtually jump off the page and slap you in the face," courts should hesitate before substituting their judgment for that of the individual evaluating the candidates. Deines v. Texas Dept. of Protective & Regulatory Servs., 164 F.3d 277 (5th Cir. 1999). "[C]ourts do not function as arbiters of employer's business decisions." Gonzalez v.Conoco,Inc.,2000WL 251744 15(S.D.

Tex. 2000).

Plaintiff contends that Trico did not rehire him following his resignation due to his ethnicity and national origin. He argues that he is clearly better qualified than the individual selected for the position based on his years of experience as a tool maker and his training in India. Thomas had worked as a tool maker for three companies between 1996 and 2003. His application did not indicate the exact start dates of each position, but assuming the maximum months worked in each year up to April 2003,Thomas had seven years of experience as a tool maker prior to applying in August 2003. At the time of his application, Thomas had not worked for approximately 3 months during the period of his incarceration. Gary Eich had worked in tool and die repair for two companies between 1995 and 2003. His application does not indicate which year he was promoted from the Press Room Supervisor to Tool and Die Repair at AdTech. Based on the application, it appears that Eich had as many as eight years of experience. In his deposition, Eich clarified that he had seven years of tool and die repair experience. Although Plaintiff and the individual selected for the job had equivalent years of experience, the Fifth Circuit has held that attempting to equate years served with superior qualifications is unpersuasive. Bodenheimer v. PPG Indus., 5 F.3d 955, 959 (5th Cir. 1993). Based on their training and experience, both Thomas and Eich were qualified for the open position. Trico had previously employed both men, and thus, Defendants were in a unique position to evaluate the applicants based on their past work

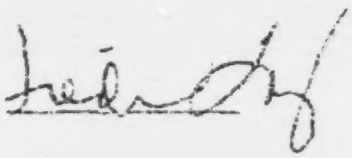
history and performance. Plaintiff has not produced any evidence that Eich performed poorly during his previous nine years of employment with Trico. Additionally, Plaintiff has not presented any evidence that Defendants based their hiring decision on his race, ethnicity, or national origin. On the contrary, Defendants kept a personnel file on Plaintiff in which his supervisors documented his history of poor attendance and frequent tardiness [Dkt. No. 127, Ex. A, B, C, and D]. Defendants possessed past personnel files for both applicants in August 2003. Thus, after determining both men were qualified for the open position, Defendants offered the position to the applicant determined to be better qualified for the job.

Plaintiff has failed to meet his burden of proof that he was "clearly better qualified" than other applicants, and therefore, Plaintiff has failed to establish that Defendant's reasons for failing to hire him were pretextual. Plaintiff has failed to disprove Defendant's explanation that Eich was better qualified for the position. In conclusion, Thomas has failed to present evidence from which a reasonable factfinder could infer that he was intentionally discriminated against. Although Plaintiff may believe discriminatory animus motivated Defendant's hiring decision, Plaintiff has failed to produce any factual basis that his national origin or ethnicity was a motivating factor in the hiring decision. Absent a genuine fact question that Plaintiff suffered unlawful discrimination in his non-selection for the job, summary judgment is proper. Therefore, the Court GRANTS Defendants' Motion for Summary Judgment [Dkt. No. 127].

Conclusion

For the reasons discussed above, the Court GRANTS Defendants' Motion for Summary Judgment [Dkt. No. 127]. In addition, the Court DISMISSES AS MOOT Plaintiffs Motion for Extension of Time to Conduct Mediation [Dkt. No. 129]. Finally, the Court ORDERS the District Clerk to close the above-styled case upon entry of final judgment.

DONE at Brownsville, Texas, this 24th day of July, 2006.



Hinda G. Trgle
United States District Judge

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
BROWNSVILLE DIVISION

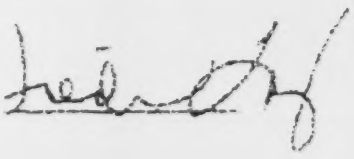
ROBERT THOMAS,	§	
Plaintiff,	§	
	§	
v.	§	**CIVIL ACTION**
	§	**NO. B-05-174**
TRICO PRODUCTS	§	
CORPORAION, JIM	§	
GAITHER AND JOHN	§	
WINN	§	
	§	
Defendants.	§	

ENTERED
JUL 25 2006

ORDER

BE IT REMEMBERED that on July 24th 2006, having granted summery judgment in favor of Defendants on all claims, the Court **ENTERS** final judgment pursuant to Federal rule of civil procedure 58.

DONE at Brownsville, Texas, this 24th day of July, 2006.



Hinda G. Trgle

United States District Judge

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
BROWNSVILLE DIVISION

ROBERT THOMAS,	§	
Plaintiff,	§	
	§	
v.	§	**CIVIL ACTION**
	§	**NO. B-05-174**
TRICO PRODUCTS	§	
CORPORAION, JIM	§	
GAITHER AND JOHN	§	
WINN	§	
	§	
Defendants.	§	
	§	

ENTERED
MAY 31 2006

ORDER

BE IT REMEMBERED that on May 31st 2006, the court considered Plaintiff's Motion to Comple[Dkt. No. 107], Plaintiff's motion to pay the Filling Fee for the Appeal [Dkt. No. 116], and Defendants' Response [Dkt. No. 117].

Introduction

The Court has discussed the factual and procedural background of this case in several other recent orders [Dkt. No. 99, 100]. This is a failure-to-hire employment discrimination case based on national origin.

Frequently, discovery matters pose special problems in employment discrimination cases. See

Atkinson v. Denton Publishing Co., 84 F.3d 144 (5th Cir. 1996); Beasley v. First American Real Estate Info. Serv. Inc., 2005 WL 1017818 (N.D. Tex. 2005). Privacy concerns for non-party employees as well as extraordinarily broad requests for production are common sources of conflict. Raddatz v. Standard Register Co., 177 F.R.D. 446 (D. Minn. 1997). Some courts have ordered in camera inspection of personnel files as a means to protect the privacy of other employees. Atkinson, 84 F.3d at 148. Other courts have ordered the production of redacted versions of files. Beasley, 2005 WL 1017818. Additionally, courts have imposed temporal and geographic limitations on the discovery to limit the risks to non-party employee privacy. Id.

In the present case, several of plaintiffs discovery requests concern information from personnel files of non-party employees [Dkt. No. 107]. Other requests are overly broad especially in the context of a failure-to-hire case involving one applicant. As Plaintiff is proceeding pro se, the Court will address each request in Plaintiff's Motion to Compel individually.

Requests for Production

Both the scope and procedure for requests for production are governed by Rule 34 of the Federal Rules of Civil Procedure.

Request for Production No. 10 seeks personnel files for Plaintiff; non-party employees Gary Eich, Guadalupe Cardenas, and Joe De La Cerda; employees hired since April 16, 2001; and all Brownsville Trico tool room employees. Defendants object due to the relevance, scope and potentially

confidential nature of the request.

These requests are potentially relevant in that this information may establish any pattern or practice of discrimination on the part of the Defendants. However, the scope of the request is overly broad. Defendants shall provide Plaintiff his complete personnel file. The request for information about specific similarly-situated employees is reasonable, but these requests shall be subject to redaction of all confidential information in order to protect the privacy of the individuals. Defendants concede that Gary Eich and Plaintiff applied for the same position. Therefore, Gary Eich's personnel file is relevant to the failure-to-hire inquiry. Defendants shall produce Eich's personnel file with all confidential material redacted. Plaintiff has not adequately identified why the personnel files of Guadalupe Cardenas and Joe De La Cerda are relevant in this matter. Thus, Defendants do not need to produce these personnel files.

The production of personnel files for all employees hired since April 2001 and all tool room employees is overly broad. As Plaintiff seeks to compare the rejection of his application with any new hires following his August 2003 application date, the Defendant shall provide the following about new Brownsville tool room employees hiredafter August 1, 2003 from existing documents: (1) the identity of each employee; (2) the employee's current or last known address; and (3) the race or ethnicity of the employee, if previously provided in a document such as an application. See Raddatz, 177 F.R.D. at 448. No other production in response to this request is required.

In response to Request for Production No. 18, Defendants cite privilege and agree to submit a privilege log to Plaintiff. In Defendants' response [Dkt. No.117], Defendants state that the privilege log has been provided to Plaintiff.

Request for Production No. 31(A) seeks information about individuals hired after Plaintiff's application date. While the scope of the request is broad, the information may establish a pattern or practice of discrimination. Therefore, the Court orders Defendants to provide any documents that include the following information about individuals hired to work in the tool room of the Brownsville shop after August 1, 2003: (1) specific training or education prior to hire; (2) number of years of applicable work experience; and (3) any prior employment with Trico. See Beasley, 2005 WL 1017818.

Request for Production No. 31(B) seeks information about the attendance records of individuals hired after Plaintiff's application date in August 2003. This information is not relevant. Plaintiff resigned from his former position in April 2003; he was not terminated for his absence from work during his incarceration.

Request for Production No. 32 seeks information about the clock used to time-stamp the employees' timecards at Trico. This request is not relevant to this case because this is a failure-to-hire matter. Therefore, Plaintiff's request for production is not relevant, and Defendants' objections are valid.

Request for Production No. 34 seeks telephone records pertaining to calls made by Plaintiff from

the detention center where he was incarcerated. Defendants object that this request is unduly burdensome. The Court agrees with Defendants and refuses to compel production of any such records.

Request for Production No. 41 seeks information about the resignation or termination of other tool room employees in the period following April 2001. This request is not relevant as this matter is a failure-to-hire lawsuit. Defendants' objections are valid.

Requests for Production No. 45, 46, 48, and 49 seek information about prior claims and suits against Trico. Defendants object that these requests exceed the scope of the matter, are not relevant, lack reasonable particularity, and require the production of confidential information of non-parties. Theses type of requests are typical requests in employment discrimination cases. See Beasley, 2005 WL 1017818. However, courts often impose temporal and geographic restrictions on such requests in response to defendant objections. Id. Additionally, limiting the request to employment discrimination matters is appropriate as well. However, in Defendants' Response [Dkt. No. 117], Defendants indicate that no other employment discrimination lawsuits have been filed against Trico in Texas. Therefore, Defendants have complied with this request by informing Plaintiff that no such documents are available.

Request for Production No. 51 seeks information about the race of new hires after the time of Plaintiff's application. This information is adequately addressed by Request for Production No. 10. Therefore, Defendants need not produce any additional information in response to this request.

Request for Production No. 52 seeks information from the personnel file of Joe De La Cerda. Defendants object to the relevance, scope, and lack of reasonable particularity of the request. Additionally, Defendants object to the request of confidential information regarding a non-party. Plaintiff has failed to establish the relevance of such information. Therefore, no further response is required to Request for Production No. 52.

Requests for Production No. 55 and 58 seek information about parties who have been dismissed from this action. These requests are not relevant. Defendants' objections are valid.

Despite Plaintiffs objections, Defendants have complied with Federal Rule of Civil Procedure 34(b) by providing the records "as they are kept in the usual course of business."

Interrogatories

Rule 33 of the Federal Rules of Civil Procedure govern interrogatories among the parties in a civil suit.

Plaintiff's First Interrogatory No. 5 requested information about individuals who applied for employment between January 2005 and the present. Plaintiffs Second Interrogatory No. 18 request specific information about applicants between January 2001 and the present. Further temporal and job description restrictions are necessary to ensure the relevance of this request. Therefore, Defendants need not respond further to First Interrogatory No. 5 or Second Interrogatory No. 18. Interrogatory No. 6 requests information about all advertisements for Defendants' job openings between

January 2001 and the present. Defendants object to the scope and relevance of the request. According to Defendants' Response [Dkt. No. 1171, Defendants have provided Plaintiff with the available information about the advertising of job openings.

Interrogatory No. 7 requests information about Defendants' reasons for not hiring Plaintiff following his application. Defendant objects that the interrogatory is vague and ambiguous. Defendants' Response indicates that this information has been communicated to Plaintiff.

Interrogatory No. 8 requests information about the resignation of another employee. This information is not relevant because this case is a failure-to-hire case. Defendants' objections are valid.

Interrogatory No. 14 seeks information about the time clock in the tool room in Brownsville. This information is not relevant because this case does not involve Plaintiffs tardiness or absence from work. Defendants' objections are valid.

CONCLUSION

The Court GRANTS Plaintiffs Motion to compel IN Part [Dkt. No. 107] with regards to Request for production No. 10 and 31(A), as specified above, and ORDERS Defendants to comply by June 6, 2006. The Court DENIES the remaining requests by Plaintiff.

Additionally, the Court DENIES Plaintiffs Motion to Continue and Extend All Deadlines in the Scheduling Order [Dkt. 120] for failure to show good cause and Plaintiff's Motion t pay the Filing Fee for the Appeal in Installments [Dkt. No. 116] for the reasons stated in the Court's previous order denying Plaintiff's Application to Proceed In Forma Pauperis.

DONE at Brownsville, Texas, this 31 day of May 2006.

Hilda G. Tagle
United States District Judge

NO. 2001-12-5216-E

IN THE INTEREST OF	§	IN THE DISTRICT COURT
	§	
GLORIA THOMAS AND ASHLEY THOMAS	§	357 JUDICIAL
	§	DISTRICT
CHILDREN	§	CAMERON COUNTRY, TEXAS

FILED
APR 03 2003

ORDER

On this the 3rd day of April, 2003, came on to be considered the Motion for Enforcement filed on February 13, 2003, by ELSY ROBERT.

ELSY ROBERT appeared in person and with attorney of record, PETER C. GILMAN.

ROBERT THOMAS appeared in person representing himself.

The Court finds that ROBERT THOMAS enjoys representing himself and has done so for numerous motions, both at the trial court level as well as to the Court of Appeals in the form of an Appeal and a number of Writs of Mandamus.

The Court, after hearing the evidence presented, as well as the arguments of both sides, finds that ROBERT THOMAS is not in contempt of a prior order in that said order is not specific.

The Court went on to order ROBERT THOMAS to sign the document "Statement of Consent: Issuance of a Passport To A Minor Under Age 14", to

which ROBERT THOMAS refused to sign. The Court herein finds ROBERT THOMAS in contempt of court.

IT IS THEREFORE ORDERED that Respondent is committed to the county jail of Cameron County, Texas, until Respondent has signed the Statement of Consent: Issuance of A Passport To A Minor Under Age 14 and shall remain incarcerated until ROBERT THOMAS signs the Statement of Consent.

SIGNED FOR ENTRY this the 3rd day of March, 2003.

4/3/03 COPIES TO
HON PETER GILMAN
HON ROBERT THOMAS

Tuesday, February 07, 2006

Thanks, Judge Abel Limas

How does this happen?
A jury in the 404th state District Court convicted 31-year-old Joel Isaac Vela on Friday with the aggravated sexual assault of an El Salvadoran immigrant after a week of testimony.
Vela failed to appear for his sentencing.
Judge Abel Limas with the 404th State District Court allowed Vela to remain free on bond until his sentencing.

If you see this man, call the police.

posted by CouldBeTrue @ 9:39 AM

1 Comments:

At 1:07 PM, drtee3 said...

Judge Limas is very generous when dealing with guilty people. He sentenced the drunk driver (0.24% blood alcohol) who hit my son and then ran home and hid his car, hoping to escape responsibility, to 90 days in the county jail and another three months to be served on weekends. The driver's name is Candelario Cantu and he lives on White Ranch Road in La Feria. We were told that there were 40 letters written on behalf of this miscreant, who stated, "It wasn't a very big wreck" when asked to make a statement.

The judge just doesn't like for guilty people to suffer

the inconvenience of paying for their crimes. We planned to help anyone who ran against him in the last election, but he ran without competition

I guess we get what we vote for.

Wm. W. Thompson,PhD
La Feria, TX

The above article can be found at:
http://stxc.blogspot.com/2006/02/thanks-judge-abel-limas.html

"America's Most Wanted" yields few tips on Amit Livingston

Laura B. Martinez (The Brownsville Herald)
July 27, 2007 - 10:41PM
BROWNSVILLE — Fugitive and convicted murderer Amit Livingston's appearance on "America's Most Wanted" generated a few telephone calls to the television show on his possible whereabouts, a show spokesman said on Friday. However, none have panned out. Livingston was featured on the show on June 23 and his appearance generated "some information," said show spokesman Evan Marshall. Marshall said he could not go into great detail on the information received, but it was turned over to law enforcement officials. "We got the tips and followed them up, but they haven't panned out," said Rolando Castañeda, a Ranger with the Texas Department of Public Safety.
Livingston has been on the run since April 14 after failing to turn himself over to Cameron County authorities.
In February, he pleaded guilty to the September 2005 murder of Edinburg substitute teacher Hermila Hernandez.
Livingston was sentenced to 23 years in prison, but was granted 60 days of freedom by state District Judge Abel Limas to "get his affairs in order."
Livingston appeared in the "15 Seconds of Shame" piece on "America's Most Wanted," which gives viewers a quick recap of why the person is sought and features the fugitive's photograph.
According to a profile on Livingston, he was last seen in Chicago, which is where his parents live.

Other possible locations he could be include Honolulu, Baltimore, Seattle and Dallas.
He's believed to be a medical transcriptionist and "computer savvy," according to the profile posted on the TV show's Web site.
Marshall said it usually takes a while for the wanted person to be "flushed out" and if nothing pans out, there's a possibility the segment featuring Livingston could be aired again.
"There's no plans yet, but it wouldn't surprise me if does air again," Marshall said.
Cameron County District Attorney Armando Villalobos said he really couldn't comment on what his office is doing to locate Livingston, but said "we are confident that he will be apprehended."
The Texas Rangers had contacted the show, requesting coverage of the case, Marshall said

The above article can be found at:
http://www.themonitor.com/onset?id=4092&template=article.html

Constitutional Topic: Due Process

The Constitutional Topics pages at the USConstitution.net site are presented to delve deeper into topics than can be provided on the Glossary Page or in the FAQ pages. This Topic Page concerns Due Process. Due Process is mentioned in two places in the Constitution; in the 5th Amendment and in the 14th Amendment.

Due process is a difficult thing to define, and the Supreme Court has not been much help over the years. Here's what we can say about due process:

In the Magna Carta, due process is referred to as "law of the land" and "legal judgment of peers." Some state constitutions continue to use these phrases.

The reference in the 5th Amendment applies only to the federal government and its courts and agencies. The reference in the 14th Amendment extends protection of due process to all state governments, agencies, and courts.

Due process, in the context of the United States, refers to how and why laws are enforced. It applies to all persons, citizen or alien, as well as to corporations.

In that, the "how" is **procedural due process**. Is a law too vague? Is it applied fairly to all? Does a law presume guilt? A vagrancy law might be declared too

vague if the definition of a vagrant is not detailed enough. A law that makes wife beating illegal but permits husband beating might be declared to be an unfair application. A law must be clear, fair, and have a presumption of innocence to comply with procedural due process.

The "why" is **substantive due process**. Even if an unreasonable law is passed and signed into law legally (procedural due process), substantive due process can make the law unconstitutional. The *Roe v Wade* abortion decision declared a Texas law in violation of due process and ruled that in the first trimester, it is unreasonable for a state to interfere with a woman's right to an abortion; during the second trimester, it is reasonable for a state to regulate abortion in the interest of the health of mothers; and in the third, the state has a reasonable interest in protecting the fetus. Another application has been to strike down legislation requiring certain non-dangerous mentally ill persons be confined against their will.

Generally, due process guarantees the following (this list is not exhaustive):

- Right to a fair and public trial conducted in a competent manner
- Right to be present at the trial
- Right to an impartial jury
- Right to be heard in one's own defense
- Laws must be written so that a reasonable person can understand what is criminal behavior
- Taxes may only be taken for public purposes

- Property may be taken by the government only for public purposes
- Owners of taken property must be fairly compensated

The above from;
http://www.usconstitution.net/consttop_duep.html

Amendment 14 - Citizenship Rights. Ratified 7/9/1868. *Note History*

1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

The above from;
http://www.usconstitution.net/const.html#Am5

Deprive
deprive *v.* 1. To take something away from; divest. 2. To keep from the possession of something. [<Med. Lat. *Deprivare*

The above from;
http://www.usconstitution.net/glossary.html#DEPRIVE

Jurisdiction
jurisdiction *n* the power, right, or authority to interpret and apply the law : the limits or territory within which authority may be exercised

The above from;
http://www.usconstitution.net/glossary.html#JURIS

SUPPLEMENTARY INFORMATION: 22 U.S.C. 213 provides that before a U.S. passport can be issued the applicant ``shall subscribe to and submit a written application which shall contain a true recital of each and every matter of fact which may be required by law or by any rules authorized by law.'' Section 236 of the Admiral James W. Nance and Meg Donovan Foreign Relations Authorization Act, Public Law 106-113, 113 Stat. 1501A-420 (22 U.S.C. 213n) (``2-Parent Consent Statute'') provides that the Secretary shall require documentary proof of both parents' or

the legal guardian's consent before issuing passports to children under age 14 ``under penalty of perjury.'' The requirement was added as a measure to prevent the use of the United States passport in international child abduction, and was implemented by Section 51.27(b) of Title 22, Code of Federal Regulations (CFR) (published at 66 Fed. Reg. 29904, June 4, 2001). Section 51.27(b)(2) provides that both parents must execute a passport application on behalf of a minor under age 14 or, if only one parent

or a legal guardian executes the application, such parent or guardian must provide documentary evidence that he or she is the sole parent or has sole custody of the child or that he or she has the non-applying parent's or guardian's consent, if applicable, to the issuance of the passport. Subsection 51.27(b)(2)(ii)(B) provides that the applying parent or guardian may provide a written statement of consent from the non-applying parent or guardian, if applicable, to the issuance of the passport.

The above from:
http://a257.g.akamaitech.net/7/257/2422/06jun20041800/edocket.access.gpo.gov/2004/04-22937.htm

(2)

NO: 07-1117

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SUPREME COURT, U.S.

IN THE
Supreme Court of the United States

ROBERT THOMAS,
Petitioner,

V.

TRICO PRODUCT CORPORATION, *ET AL.*,
Respondents.

On Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit

PETITION FOR REHEARING

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TABLE OF CONTENTS

INTRODUCTION.....P 1

I. There are already other cases developing in this country regarding whether a person can be coerced by a Judge by ordering to incarcerate him until he signs consent on the application for a passport of his minor child, and this Court should rehear this matter since the answer to this question is of much important to the public.----------P.2

II. This Court should Rehear this matter also for the reason that there is Conspiracy and abuse of official power and racial profiling involved in this case. ----------P. 4

CONCLUSION----------P. 7

CERTIFICATE OF PRO SE PETITIONER------P.8

TABLE OF AUTHORITIES

CASES

1. Eagles v. United States, 329 U.S.304, 315 (1946)----------P. 3

2. *Cerqueira v. American Airlines, Inc* 502 F. 3d 1(2008, 1st Cir.)----------P.5

3. *United States* v. *Morrison*, 529 U.S. 598, 607 (2000)----------P. 6

4. *Reno* v. *Condon*, 528 U.S. 141, 147 (2000)----------P. 6

5. *Union Pac. Ry. Co.* v. *United States*, 99 U.S. (9 Otto) 700, 718 (1878)-------P. 6

6. *Joint Anti-Fascist Refugee Committee* v.

McGrath, 341 U.S. 123, 164 (1951)----------....-P.6

7. *Rostker*v. *Goldberg*, 453 U.S. 57, 64 (1981).----------P.6

8. *Morrison*, 529 U.S. at 607---------P. 6

RULES AND STATUES

1. Rule 44.2----------P.1

2. 16 Am. Jur. 2D *Conspiracy* § 50 (1998)----------P.2

3. 14th Amendment

MISSELLANEOUS

1. Supreme Court Practice, 7th ed., Stern, Gressman, Shapiro & Geller, 6,7 n.22 (BNA 1993) (quoting Justice Rehnquist from Sunshine in the Third Branch, 16 Washburn L. Rev. 559, 559-60 n.1 (1977), and Justice Powell, What Really Goes On at the Supreme Court, 66 A.B.A.J. 721.722 (1980).-------P. 4

PETITION FOR REHEARING

On June 5, 2008 Petitioner (hereinafter mentioned as Thomas) received a letter from Honorable clerk of this Court, William K. Sutter that this Court has entered an order on June 2, 2008, denying Thomas' petition for writ of Certiorari (No. 07-1117).

Pursuant to Rule 44.2, Thomas respectfully petitions this Court for rehearing.

ARGUMENTS AND AUTHORITIES

I. There are already other cases developing in this country regarding whether a person can be coerced by a Judge by ordering to incarcerate him until he signs consent on the application for a passport of his minor child, and this Court should rehear this matter since the answer to this question is of much important to the public

Before the denial of Thomas' petition for writ of certiorari, a Lawyer from Florida has informed Thomas that a Judge in Florida is also trying to compel his client to sign consent on the passport application of a minor child. He also informed Thomas that he also could not find any supporting case laws regarding this matter. Now this Court may see that if this Court does not answer Thomas' question, many lower courts will think that they can force a person to sign consent, which will violate citizens constitutional rights. Since this Court has the Supreme authority to conserve the citizen's

rights it should rehear Thomas' case.

II. This Court should Rehear this matter also for the reason that there is Conspiracy, abuse of official power and racial profiling involved in this case.

The necessary elements of civil conspiracy are: (1) an agreement between two or more persons to commit an unlawful or tortious act (or a lawful act in an unlawful manner); (2) an overt tortious act committed in furtherance of the agreement; and (3) an injury caused by the unlawful or tortious act performed by one of the conspirators. *See, e.g.*, 16 Am. Jur. 2D *Conspiracy* § 50 (1998).

All these elements are present in this case. Evidence in this case shows that all the Courts and the respondents had only one aim. Deny Thomas any relief, which he was entitled. They used unlawful methods for this.

Respondents Trico, Gates and Tomkins plc are multi billion dollar companies and they have lots of money to spare. Evidence in this case shows that from the beginning itself the opposing counsels were communicating ex-parte with the Judge (R1792-1793). The District Court then did a favor to them by first ruling that the attendance records of Thomas or other employees were not relevant and denied discovery on that. But when Thomas filed his response to the motion for summary Judgment, the Judge saw that Thomas has several years experience and then the Judge simply sided with the respondents and ruled that Thomas was not better

qualified because of his attendance problems. She completely ignored Thomas' arguments regarding respondents' false explanations or his true qualifications.

After Thomas filed his appeal in the 5th Circuit, this Court may see that the 5th Circuit also simply sided with the respondents and did not even consider the false explanations of respondents or the evidence brought by Thomas. All the Courts in this case, made such a one sided ruling against Thomas, it is very clear that the respondents have conspired and influenced the employees of the courts. Thomas strongly believe that the Justices may not even have seen his case.

Finally when Thomas filed his petition for writ of certiorari respondents first stated that they want to file the response and extended the time to file the response for one month. So this clearly indicated that, Thomas' petition was highly meritorious. Since this Court could deny a petition without giving any opinion, the respondents took advantage of that situation. Even though it is unknown what has happened during the one month period, respondents did not spend any time for preparing their response, but instead they might have used the time to influence the employees and then they decided not to respond. So it is most likely that some one has assured them that the petition will be denied.

The public has no ability to know what is really happening at the conference which decides about the petition. Looking at the past evidence from this case, Thomas strongly believe that, the Justices may not even may have seen this case

"Secrecy and anonymity are not congenial to our tradition of procedure...". Eagles v. United States,

329 U.S. 304'315 (1946). In this case, someone unknown to Petitioner or the public denied rights and remedies that involve the highest possible considerations of the Judicial Branch by a "private conference" that was confidential." Supreme Court Practice, 7th ed., Stern, Gressman, Shapiro & Geller, 6,7 n.22 (BNA 1993) (quoting Justice Rehnquist from Sunshine in the Third Branch, 16 Washburn L. Rev. 559, 559-60 n.1 (1977), and Justice Powell, What Really Goes On at the Supreme Court, 66 A.B.A.J. 721.722 (1980).

Since the horrific events of September 11, our nation has witnessed an alarming rise in incidents of discrimination against Arab and Muslim Americans and against persons perceived to be Arab or Muslim. Now there are cases developed in this country which makes serious doubt whether the promise of equal protection embodied in federal and state anti-discrimination laws have become a meaningless guarantee for persons perceived to be Arab or Muslim. In response to this troubling backlash, President Bush, in his first address to Congress following the attacks, felt compelled to declare that "no one should be singled out for unfair treatment or unkind words because of their background or religious faith." Attorney General Ashcroft was equally adamant in proclaiming, just days after the attacks, that "we must not descend to the level of those who perpetrated Tuesday's violence by targeting individuals based on their race, their religion, [or] their

national origin."

Records in this case shows (R1552 and R1581) in Thomas' divorce case, the opposing counsel insulted Thomas in front of the Judge by comparing him to 'Taliban' But the Judge did not take any action against the lawyer. In Trico the Employees and the Supervisors called Thomas "Gandhi". When Thomas was arrested and incarcerated for not signing consent, a fellow employee (Cuauhtémoc Garcia) also was arrested. But he was released immediately. His affidavit shows that, he was arrested because the court officials thought that he is also from India like Thomas (R1601). So there we can see an evidence of racial profiling by the court.

In Cerqueira v. American Airlines, Inc 502 F.3d 1(2008, 1st Cir.), Mr. Cerqueira was removed from the plane, because he appeared like an Arab or Muslim, like the terrorist. But infact he was a Portuguese. Even after he passed police clearance, the American Airlines refused to book him and he has to fly with another plane. The jury found that The American Airlines intentionally discriminated Cerqueria because of his race and gave verdict in favor of him. But to everyone's surprise the the Court of Appeals for the 1st Circuit not only vacated the case, but also they made an opinion saying that racial profiling is allowed for security reasons. Thomas also believe that he is a victim of Racial profiling by the courts. He had tons of evidence against the respondents, but all the Courts refused to look at

this, which is against the 14th Amendment. The Congress brought the 14th Amendment mainly to eliminate racial discrimination in this Country.

It is well-established that Congressional legislation is entitled to a strong presumption of constitutionality. See *United States* v. *Morrison*, 529 U.S. 598, 607 (2000); *Reno* v. *Condon*, 528 U.S. 141, 147 (2000); *Union Pac. Ry. Co.* v. *United States*, 99 U.S. (9 Otto) 700, 718 (1878) ("Every possible presumption is in favor of the validity of a statute, and this continues until the contrary is shown beyond a rational doubt."). "The Congress is a coequal branch of government whose Members take the same oath [judges] do to uphold the Constitution of the United States. As Justice Frankfurter noted in *Joint Anti-Fascist Refugee Committee* v. *McGrath*, 341 U.S. 123, 164 (1951) (concurring opinion), we must have 'due regard to the fact that this Court is not exercising a primary judgment but is sitting in judgment upon those who also have taken the oath to observe the Constitution and who have the responsibility for carrying on government.'" *Rostker* v. *Goldberg*, 453 U.S. 57, 64 (1981). Thus, a court should declare a statute beyond Congress's authority "only upon a *plain showing* that Congress has exceeded its constitutional bounds." *Morrison*, 529 U.S. at 607 (emphasis added). Therefore Thomas deserves equal protection and justice and this Court should respect the 14th Amendment and should

hear Thomas' side of the story.

Any reasonable person who reads Thomas' petition will agree that Thomas' questions should be answered and the case should be reviewed by this Court. Thomas is been deprived of his rights and he is been seriously injured mentally and financially by this. In the interest of justice, and public interest this court should rehear Thomas' case and grant the petition for writ of certiorari.

CONCLUSION

For the foregoing reasons, Thomas respectfully ask this Court to grant his petition for rehearing.

Respectfully Submitted

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June 26, 2008.

CERTIFICATE OF PETITIONER

Undersigned pro se petitioner certifies that his petition for rehearing is restricted to the grounds specified in the Rule 44.2 and the petition is presented in good faith and not for the purpose of delay.

Robert Thomas, pro se